

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BMO HARRIS BANK N.A., a national
banking association,

Plaintiff,

v.

MILLER TRANSPORTATION LLC, a
Washington limited liability company; and
SKY BENSON, an individual resident and
citizen of California,

Defendants.

CASE NO. C20-148 RSM

ORDER GRANTING IN PART
PLAINTIFF BMO HARRIS BANK N.A.’S
MOTION FOR DEFAULT JUDGMENT
AS TO DEFENDANT MILLER
TRANSPORTATION LLC

I. INTRODUCTION

This matter is before the Court on Plaintiff BMO Harris Bank N.A.’s Motion for Default Judgment as to Defendant Miller Transportation LLC. Dkt. #28. Plaintiff was previously granted default judgment as to Defendant Sky Benson. Dkt. #20. Having reviewed the record, and for the reasons that follow, the Court grants Plaintiff’s motion in part.

II. BACKGROUND

For the purposes of Plaintiff’s motion for default judgment, the Court accepts the allegations of the complaint as true. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (“The general rule of law is that upon default the factual allegations of the

1 complaint, except those relating to the amount of damages, will be taken as true.”) (citing *Geddes*
2 *v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977)).

3 **A. Factual Background**

4 Three times, Plaintiff loaned Defendant Miller Transportation LLC (“Defendant Miller
5 Transportation”) funds for the acquisition of certain specified trucking equipment (the
6 “Collateral”).¹ Dkt. #1 at ¶¶ 9–11. Each time, Defendant Miller Transportation entered into
7 agreements to repay the loan, with interest, and granted Plaintiff a security interest in the
8 Collateral (the “Agreements”). *See* Dkt. #1-2 at 2–6, 8–12, 14–17. Plaintiff perfected its security
9 interest in the Collateral by properly recording liens on the Collateral. Dkt. #1 at ¶ 14.

10 Defendant Miller Transportation failed to make payments due and defaulted under the
11 Agreements. *Id.* at ¶¶ 17–19. Under the Agreements, Plaintiff accelerated the amounts due and
12 owing and indicated its intent to take possession of the Collateral because of its security interest.
13 *Id.* at ¶¶ 22, 29–31. As of the dates of default, a total of \$129,775.20 remained due under the
14 Agreements. Dkt. #29 at 13. To date, Defendants “have failed or refused to pay the amounts
15 due and owing under the Agreements and Guaranties” and Defendant Miller Transportation “has
16 failed or refused to surrender the Collateral to Plaintiff.” Dkt. #1 at ¶¶ 32–33.

17 **B. Procedural Background**

18 Plaintiff initiated this action on January 30, 2020, making claims for injunctive relief,
19 specific performance, replevin, and breach of contract. Dkt. #1. Plaintiff generally sought to
20 prevent Defendant Miller Transportation’s continued use of the Collateral, sought for Defendant
21 Miller Transportation to perform its obligations under the parties’ agreements, sought money
22

23 ¹ More specifically, the trucking equipment constituting the Collateral was: (1) a 2015
24 Freightliner Cascadia Series Tractor (VIN: 3AKJGLD57FSFN3372); (2) a 2011 Great Dane
Reefer Van Trailer (VIN: 1GRAA0621BW703560); and (3) a 2015 Freightliner Cascadia Series
Tractor (VIN: 3AKJGLD51FSGF7139). Dkt. #1 at ¶ 13.

1 damages, and sought costs, attorneys' fees, and interest. *Id.* On July 9, 2020, Plaintiff served
2 Defendant Miller Transportation, Dkt. #22, and when Defendant Miller Transportation failed to
3 appear or defend in this action, default was entered on August 11, 2020. Dkt. #25.

4 **III. DISCUSSION**

5 **A. Jurisdiction**

6 The Court has authority to enter default judgment against Defendant Miller
7 Transportation based on the Court's order granting Plaintiff's motion for default, Dkt. #23, and
8 the Clerk's subsequent entry of default, Dkt. #25, and pursuant to Federal Rule of Civil Procedure
9 55 and Local Civil Rule 55. The Court has subject matter jurisdiction over Plaintiff's claims
10 based on the diversity of the parties under 28 U.S.C. § 1332(a). The Court has personal
11 jurisdiction over Defendant Miller Transportation as it has sufficient minimum contacts with
12 Washington and Plaintiff's claims arise from those contacts. *See* Dkt. #1. Specifically,
13 Defendant Miller Transportation is a limited liability company formed in Washington and with
14 a principal place of business in Bellevue, Washington. Dkt. #1 at ¶ 2.

15 **B. Liability**

16 Prior to entering default judgment, district courts must determine whether the well-
17 pleaded allegations of a plaintiff's complaint establish a defendant's liability. *Eitel v. McCool*,
18 782 F.2d 1470, 1471–72 (9th Cir. 1986). In making this determination, courts must accept the
19 well-pleaded allegations of a complaint, except those related to damage amounts, as established
20 fact. *Televideo Sys., Inc.*, 826 F.2d at 917–18.

21 In this case, Plaintiff adequately establishes Defendant Miller Transportation's liability.
22 The allegations of the Complaint and the documents attached thereto indicate that Defendant
23 Miller Transportation defaulted on its obligations under its Agreements with Plaintiff, leaving
24 principal, interest, certain fees and charges, and costs due. Further, Defendant Miller

1 Transportation has breached the parties' Agreements by retaining Collateral for the loans despite
2 Plaintiff's demands that it be returned pursuant to their Agreements.

3 **C. *Eitel* Factors Support Default Judgment**

4 Having determined Defendant Miller Transportation's liability, the Court considers
5 whether to exercise its discretion to enter a default judgment. *Alan Neuman Prods. Inc. v.*
6 *Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988) ("Clearly, the decision to enter a default judgment
7 is discretionary."). In making this determination, many courts find it helpful to consider the
8 following factors set forth in *Eitel*:

9 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
10 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
11 stake in the action; (5) the possibility of a dispute concerning material facts; (6)
whether the default was due to excusable neglect, and (7) the strong policy
underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

12 *Eitel*, 782 F.2d at 1471–72.

13 With only cursory consideration of the *Eitel* factors, the Court finds it clear that most of
14 the factors weigh in favor of the entry of default judgment against Defendant Miller
15 Transportation. Plaintiff would be deprived of the benefit of its Agreements with Defendant
16 Miller Transportation if default judgment is not entered. The merits of Plaintiff's claims appear
17 strong, Plaintiff's Complaint details Defendant Miller Transportation's legal liability, and the
18 simple facts alleged appear unlikely to lend themselves to disputes of material facts. The sum at
19 stake is no doubt significant to the parties but does not appear excessive and the amounts were
20 agreed to by Defendant Miller Transportation. Further, there is no indication for the Court that
21 Defendant Miller Transportation's failure to appear is the result of excusable neglect and
22 Defendant Miller Transportation has failed to appear and defend the action or any of Plaintiff's
23 subsequent motions. LOCAL RULES W.D. WASH. LCR 7(b)(2) ("[I]f a party fails to file papers in
24 opposition to a motion, such failure may be considered by the court as an admission that the

1 motion has merit.”). Defendant Miller Transportation’s failure to participate effectively hampers
 2 the “strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
 3 merits,” *Eitel*, 782 F.2d at 1472, and further supports default judgment. Accordingly, the Court
 4 grants default judgment as to Defendant Miller Transportation.

5 **D. Appropriate Relief**

6 Plaintiff must provide the court with evidence to establish the propriety of a sum of
 7 damages sought. *Televideo*, 826 F.2d at 917–18.

8 **1. Contractual Relief**

9 Plaintiff seeks primarily contractual relief and establishes that as of the dates upon which
 10 Defendant Miller Transportation defaulted on its loans, a total principal of \$129,775.20 remained
 11 due under the Agreements. Dkt. #29 at ¶ 12, Ex. A. The principal sums under each loan
 12 continued to accrue interest at the contractual rate² until Plaintiff declared default on December
 13 27, 2019, resulting in additional interest of \$17,250.24. Dkt. #29 at Ex. A. In addition, \$1,589.93
 14 in unpaid interest was due for the month prior to default, unpaid late fees of \$1,305.35 were
 15 outstanding, and an additional \$60 of miscellaneous fees remained outstanding. *Id.* Upon default
 16 and acceleration, Plaintiff charged an additional \$2,061.60 in fees. *Id.* This presented an
 17 outstanding balance, as of December 27, 2019, of \$152,042.32. Dkt. #29 at ¶ 16.

18 Plaintiff additionally seeks interest accrued since December 27, 2019, which under the
 19 Agreements was to accrue at the rate of 1.5% per month, calculated on the assumption of a
 20 twelve-month year with equal thirty-day-months. *Id.* at ¶ 13. Plaintiff calculates the interest
 21 accruing on the principal on a per diem basis as \$64.89. Contemporaneous with their seeking
 22 default judgment, Plaintiff calculated the accrual of an additional \$17,130.96. *Id.* at ¶ 18.

23
 24 ² The Agreements had contractual interest rates of 14.41% 15.38% and 14.69%. Dkt. #1-2 at 2, 8, 14; at Dkt. #29 Ex. A.

1 The Court finds adequate support in the record for the amounts sought by Plaintiffs.
2 Accordingly, the Court grants contractual damages of \$169,173.28 with interest to accrue as
3 allowed by federal law from the date of this Order.

4 **2. Equitable and Injunctive Relief**

5 In addition to contractual damages, Plaintiff also seeks orders of possession with regard
6 to the Collateral and injunctive relief. Plaintiff alleges that the Agreements entitle it to immediate
7 possession of the Collateral and require Defendant Miller Transportation to return the Collateral,
8 at its own expense, to any location that Plaintiff directs. Dkt. #29 at ¶ 23; *see e.g.* Dkt. #1-2 at 4
9 (Section 5.2). But Defendant Miller Transportation has not done so, Dkt. #29 at ¶ 24, and
10 Plaintiff argues that Defendant Miller Transportation's continued possession is therefore without
11 a legal basis. Dkt. #28 at 5. Further, and due to the nature of the Collateral, Defendant Miller
12 Transportation is able to continue utilizing the Collateral for commercial purposes while
13 effectively hiding the Collateral throughout the United States. Dkt. #29 at ¶ 26. Plaintiff alleges
14 that it is specifically injured by Defendant Miller Transportation's continued possession because
15 once it regains possession of the Collateral it plans to sell the collateral and because delay in
16 doing so depreciates the amount Plaintiff expects to realize from the sale of the Collateral.

17 Plaintiff maintains that to avoid this harm the Court should issue orders of possession and
18 grant Plaintiff certain injunctive relief. Specifically, Plaintiff requests that the Court enjoin
19 "Borrower and other persons and firms having knowledge of this injunction" from (1)
20 "continuing to use the Collateral;" (2) failing to disclose the location of the Collateral to Plaintiff;
21 and (3) failing to transfer possession of the Collateral to Plaintiff. Dkt. #28 at 9.

22 The Court does not find such relief appropriate here. The Court's finding is primarily
23 premised on the absence of an identifiable injury to Plaintiff that has not been remedied by the
24 other portions of this Order. Plaintiff maintains that it has the right to sell the Collateral to satisfy

Defendant Miller Transportation's debt under the Agreements and that it is harmed by depreciation to the Collateral that may occur prior to any sale taking place. But the Court finds this injury speculative. There is, of course, a chance that Plaintiff will be harmed by depreciation of the Collateral, but even if this is the case, Plaintiff does not explain why any such harm could not be adequately compensated by money damages. In fact, and even in the absence of any injunctive relief, Plaintiff is wholly compensated by the Court's award of money damages above.³ Finding a lack of legal support for Plaintiff's requests and a lack of a cognizable injury, the Court denies further relief.

E. Attorneys' Fees

Plaintiff asserts it is further entitled to attorneys' fees under the Agreements. However, Plaintiff anticipates that further action will be necessary in this case and asks that the Court stay its deadline for seeking any attorneys' fees and costs that may be available under the Agreements. Dkt. #15 at 4. The Court grants the request.

IV. CONCLUSION

Accordingly, and having reviewed Plaintiff's motion, the declarations and exhibits submitted in support, and the remainder of the record, the Court finds and ORDERS:

1. Plaintiff BMO Harris Bank N.A.'s Motion for Default Judgment as to Defendant Miller Transportation LLC (Dkt. #28) is GRANTED in part, as set forth above.
2. The Clerk shall enter judgment in favor of BMO Harris Bank N.A. and against Miller Transportation LLC in the amount of \$169,173.28.
3. Post-judgment interest shall accrue pursuant to 28 U.S.C. § 1961.

³ The Court further notes that Plaintiff requests an injunction which binds third parties without demonstrating that Plaintiff is likely to be irreparably injured by those third parties in the absence of injunctive relief.

1 4. Plaintiff's request for a stay of the 14-day filing period for filing a motion requesting
2 attorneys' fees, as set forth in Federal Rule of Civil Procedure 54(d)(2)(B), is granted
3 and the deadline is stayed pending further order of this Court.

4 5. The Clerk may administratively CLOSE this action.

5 Dated this 11th day of March, 2021.

6
7 

8 RICARDO S. MARTINEZ
9 CHIEF UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24